

APIC

AMERICAN PUBLIC INFO-HIGHWAY COALITION

December 20, 1993

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

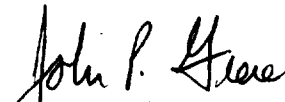
RM-8380

Re: Petition for Rulemaking

Dear Mr. Caton:

Attached are an original and five (5) copies of the Comments of the American Public Info-Highway Coalition on the Joint Petition for Rulemaking by the Media Access Project, United States Telephone Association and Citizens for a Sound Economy Foundation.

Sincerely,



John P. Giere
Executive Director, APIC

cc: Robert Kimball

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Joint Petition for Rulemaking)
to Establish Rules for Subscriber) DA 93-1343
Access to Cable Home Wiring for the)
Delivery of Competing and) RM No-8380
Complementary Video Services)
)

COMMENTS OF THE
AMERICAN PUBLIC INFO-HIGHWAY COALITION IN SUPPORT OF
THE JOINT PETITION FOR RULEMAKING ON CABLE TELEVISION WIRING

The American Public Info-Highway Coalition ("APIC") hereby submits its comments on the Joint Petition for Rulemaking on Cable Television Wiring (the "Petition") in the above captioned matter.¹ The Petition seeks a determination by the Federal Communications Commission (the "Commission") on how cable subscribers, under Title 47 Part 76, may have access to existing cable home wiring for the delivery of competing and complementary services. Petitioners assert that cable subscribers who have not terminated service should have equal access to competing and complementary services over existing cable home wiring.

APIC respectfully submits that the petition to initiate a new proceeding to determine how subscribers who have not terminated service can have equal access to competing and complementary services over existing cable home wiring should be granted by the Commission.

¹ The Petition for Rulemaking was jointly filed by the Media Access Project, the United States Telephone Association and the Citizens for a Sound Economy Foundation (Media Access Project, et al.)

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I. APIC REPRESENTATIVES

All communications and correspondence regarding this matter should be directed to the following representatives of APIC:

Mr. William J. Ray
President
American Public Info-Highway Coalition
Glasgow Electric Plant Board
P.O. Box 1809
Glasgow, KY 42141-1809

Mr. John Giere
Ms. Jennifer Peper
Mr. Patrick Murphy
American Public Info-Highway Coalition
1101 Connecticut Ave, NW
Suite 1000
Washington, D.C. 20036-4374

II. APIC'S INTEREST IN THE PETITION FOR RULEMAKING

APIC is an independent, non-profit consortium of state and local governmental entities, specifically state and local publicly owned electric utilities, trade associations and public interest groups, committed to the development of a national information highway that strives to provide a system that is universally accessible, offers varied and affordable services and is in the form of a seamless communication.

Many of our members, both municipalities and public utilities, already offer competitive cable services to their communities through municipally owned and operated cable stations. In addition, hundreds of other communities are in the process of building a system to deliver telecommunications services while many more are conducting feasibility studies to determine their ability to provide such a system. These cable lines have the capacity to deliver a broad

range of telecommunications services, including both enhanced public power utility services and affordable public/private competitive cable service, both with the capability and promise of providing much more in the way of telecommunications in the future.

III. APIC'S COMMENTS

A. The Commission Has Acknowledged the Potential Need to Broaden Cable Home Wiring Rules

On February 1, 1993 when the Commission adopted the Cable Home Wiring rules² implementing section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992")³, the Commission declined to extend its rulemaking to include the issue of access to cable home wiring outside the context of a cable subscriber who has terminated service. However, the Commission at that time did note that "broader cable house wiring rules could foster competition and could potentially be considered in the context of other proceedings."⁴ Moreover, given the general intention of the 1984 Cable Act to "promote competition in cable communications"⁵ it is reasonable to conclude that the time to extend the ruling has come.

B. Home Wiring Can Be Useful For Functions Beyond Cable Television

As we are all aware, communications technologies are converging such that it will soon be difficult to distinguish between a public utility, a cable company and a telephone company.

² In the Matter of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260, February 1, 1993.

³ Public Law 102-385, Section 16(d), 106 Stat. 1460 (1992).

⁴ REPORT AND ORDER, MM Docket No. 92-260, at 4.

⁵ 47 U.S.C. §521(6) (1984).

Through the advent of new technology it is now possible for municipalities to utilize fiber optics and broad band coaxial cable in the implementation of demand side energy management and remote meter reading. Thus, access to cable home wiring would allow for the more efficient delivery of electricity as well as the delivery of new telecommunications systems. This technology will make available to every household the ability to be linked to the local hospital, police department and fire department. It will also be possible to place computer and CD-ROM resources on community file servers which each home will have access to via the broad band wiring and a personnel computer. APIC's concern is that without a clear determination by the Commission on the ownership of cable home wiring for existing cable recipients, important entrepreneurial developments which could enhance the lives of every American consumer will be passed over because of the threat of legal battles that must be fought in order to deliver such a service to a community. Cable companies have in the past used their bottleneck control of broadband services into the home to thwart such entrepreneurial competition.

As the Joint Petition for Review, filed by the Media Access Project, et al., points out, the City of Glasgow, Kentucky was impaired in its ability to offer a competing cable service by the then existing private cable industry's attempts to prevent access to cable home wiring after termination.⁶ Although Glasgow eventually won its battle and is today providing alternative cable service at an average cost of \$18 per month less, much time and resources were expended in this legal battle that could have been more easily resolved at the regulatory level. Thus,

⁶ See Joint Petition for Rulemaking on Cable Television Wiring filed by Media Access Project, et al., at 5.

accessibility to cable home wiring is essential to ensure the development of new beneficial entrepreneurial communication applications and for a wide array of telecommunications services to be provided to communities.

C. The Commission Should Grant The Petition to Avoid a Monopoly in the Creation of the Information Highway

1. Commission's Determination Should Promote Competition

Today, new information services are so vital to the growth of the nation that every branch of the federal government is getting involved in the discussion of promoting fair competition and customer accessibility in its development of the future information Superhighway. The delivery of multiple telecommunications services over one wire is merely the beginning phase in the creation of this info-highway, or National Information Infrastructure ("NII") as the Clinton Administration has termed it. Dramatic mergers in the telephone and cable industry⁷ signal the creation of a conglomerate designed to build and control the information highway. If this industry is allowed to dominate the development of the Info-highway, our communities will be at the mercy of one company to deliver every communication system possible over this one wire.

In order for there to be a viable competitor in the face of monopolistic conglomerates with the ability to own, operate and deliver every telecommunication system imaginable, the Commission must honor the Petition and initiate a new proceeding to determine how cable subscribers may have access to cable home wiring for the delivery of competing and complementary services regardless of whether or not they have terminated service.

⁷ Namely the proposed Bell Atlantic and Tele-Communications, Inc. ("TCI") merger.

2. Open Access to Cable Home Wiring Is Essential to Competition

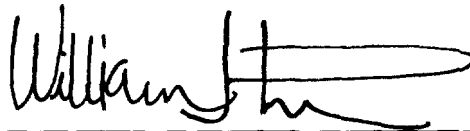
APIC believes that in order to avoid the problems in the creation of the info-highway that have plagued the development of the cable industry, the Commission should initiate a process to make a rule that cable television wiring in the interior of a building and any connecting subsequent underground drop lines to be a fixture and therefore part of the real property, regardless of the status of delivery of cable over that line. Such a ruling would allow competing communication carriers access to the wire and avoid the potential monopoly in the delivery of these additional communication systems.

IV. CONCLUSIONS

APIC urges the Commission to grant the Petition to initiate a proceeding to examine the manner by which all consumers can have access to cable home wiring for the delivery of competing and complementary services regardless of the status of cable television delivery.

Respectfully submitted this 21st day of December 1993,

AMERICAN PUBLIC INFO-HIGHWAY COALITION

A handwritten signature in black ink, appearing to read "William J. Ray", is written over a horizontal line.

William J. Ray
President, APIC
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(202) 828-2405